

## REMARKS

Claims 1 through 16 are in the application, with Claims 1, 9 and 14 being independent.

The pending claims are subject to a restriction requirement. In particular, the Office Action groups the claims into Claims 1 through 8 and 14 through 16 (Group I), and Claims 19 through 13 (Group II). Election of one of these Groups is required because the Groups are alleged to be distinct.

In response to the restriction requirement, Applicant provisionally elects Group I, Claims 1 through 8 and 14 through 16. Examination and allowance of the elected claims are respectfully requested.

This provisional election is made with traverse. Applicant requests reconsideration of the restriction requirement in light of the following arguments, and pursuant to 37 CFR §1.143. As grounds for traversal, Applicant believes that Groups I through II are clearly not distinct from one another.

Restriction is proper only where an application contains claims directed to two or more independent or distinct inventions. As described in MPEP §806.05(f), the test for determining distinctness of claims directed to a product (i.e., the Group I claims) and to a process for making the product (i.e., the Group II claims) includes two prongs, and the claims may be deemed distinct if either prong is satisfied. The Office Action uses Form Paragraph 8.18 to set forth the test for distinctness. According to the Form Paragraph, the first prong is “that the process as claimed can be used to make other and materially different product (sic)”. The Office Action appears to indicate that the claimed inventions satisfy this first prong.

However, after reviewing §806.05(f), Applicant notes that the first prong of the test for distinctness is “**that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products (emphasis added)**”. Applicant submits that the claimed product and process do not satisfy the first prong of the test for distinctness because the claimed process is an obvious process of making the claimed product.

The Office Action fails to establish distinctness even under the Office Action’s erroneous interpretation of the first prong. Specifically, the Office Action does not offer any example of a materially different product that can be made by the process as claimed. With regard to the

second prong, the Office Action also fails to set forth a materially different process that may be used to make the product as claimed.

In summary, Group I and Group II are not believed to be distinct, and the Office Action fails to posit a *prima facie* case of distinctness under any applicable test. Restriction between Group I and Group II is therefore believed to be improper and withdrawal of the Restriction Requirement is respectfully requested.


### CONCLUSION

In view of the foregoing, Applicant respectfully requests withdrawal of the outstanding restriction requirement and examination of Claims 1 through 16 on the merits. In this regard, Claims 1 through 16 are believed to be in condition for allowance and such action is respectfully requested at the Examiner's earliest convenience.

If there remains any question regarding the present application, or if the Examiner has any suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact the undersigned via telephone at (203) 972-0049.

Respectfully submitted,

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Date



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